

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 EURE-00 SSO-00 NSCE-00 USIE-00 INRE-00

CIAE-00 DODE-00 PM-07 H-03 INR-11 L-03 NSAE-00 NSC-07

PA-04 RSC-01 PRS-01 SP-03 SS-20 IO-14 ACDA-19 SAJ-01

OMB-01 DRC-01 /122 W

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O R 181710Z SEP 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 5110

INFO USMISSION BERLIN

USMISSION NATO BRUSSELS

AMEMBASSY MOSCOW

AMEMBASSY LONDON

AMEMBASSY PARIS

C O N F I D E N T I A L SECTION 01 OF 02 BONN 14789

E.O. 11652: GDS

TAGS: GE, GW, US, UK, FR, UK, BW

SUBJECT: BRUECKMANN CASE -- TALKING POINTS FOR
POSSIBLE EASTERN APPROACH

REFS: (A) BONN 14708

(B) STATE 202763

1. US-DEVELOPED TALKING POINTS TABLED AND BRIEFLY
DISCUSSED AT SEPTEMBER 18 TRIPARTITE MEETING. OTHER
REPS AGREED WITH THRUST AND EXPRESSED DESIRE TO CON-
SIDER MORE CLOSELY BEFORE FORMALLY GIVING AD REF
APPROVAL FOR RECOMMENDATION TO AUTHORITIES. US REP
NOTED THAT, WITH BUNDESTAG LEGAL COMMITTEE MEETING
SEPTEMBER 18, PRESS STORIES AS EARLY AS SEPTEMBER 19
ARE LIKELY -- WITH SOVIET APPROACH SHORTLY THEREAFTER
POSSIBLE. PURPOSE WOULD THUS BE SERVED IN PROVIDING
TEXT TO AUTHORITIES EVEN PRIOR TO FULL TRIPARTITE
CONSIDERATION IN BONN. OTHERS REPLIED THEY AGREED.
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2. BEGIN TEXT

A. TALKING POINTS DEPEND TO SOME EXTENT UPON POINT IN TIME AT WHICH SOVIETS APPROACH US. WE WOULD THINK, HOWEVER, THAT THEY MIGHT INCLUDE THE FOLLOWING:

-- THE ALLIES UNDERSTAND THEIR RESPONSIBILITIES UNDER THE QA IN RESPECT TO THE BRUECKMANN AFFAIR AND HAVE FULFILLED THEM PRIOR TO THE SOVIET STATEMENT. THROUGHOUT THE AFFAIR THE ALLIES HAVE HAD ONLY ONE INTEREST: TO INSURE THAT NOTHING THEREIN EFFECTED ANY CHANGE IN THE RELATIONSHIP OF THE FEDERAL CONSTITUTIONAL COURT TO BERLIN AND THEREBY IN THE RELATIONSHIP OF THE FRG TO BERLIN. TO THIS END THE ALLIES HAVE CONSISTENTLY REAFFIRMED THE POSITION, TO WHICH REFERENCE WAS MADE IN THE LETTER OF THE THREE AMBASSADORS TO THE FEDERAL CHANCELLOR THE TEXT OF THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971, THAT THE FEDERAL CONSTITUTIONAL COURT HAS NO JURISDICTION IN RELATION TO BERLIN.

-- EXCEPT FOR THIS POINT, THE DETERMINATION OF WHETHER FRAULEIN BRUECKMANN IS RETURNED TO THE GDR IS PURELY A MATTER TO BE RESOLVED BY THE COMPETENT GERMAN AUTHORITIES IN ACCORDANCE WITH THE LAW IN FORCE IN BERLIN. THIS THE BERLIN AUTHORITIES NOW APPEAR TO BE IN THE PROCESS OF DOING.

B. IN THE EVENT THAT THE SOVIETS QUESTION SPECIFICALLY THE PROCEDURES UNDER WHICH THE BERLIN AUTHORITIES ACTED, WE MIGHT ALSO SAY:

-- THE BERLIN STAATSANWALT HAS ACTED PURSUANT TO A LAW TAKEN OVER IN BERLIN IN ACCORDANCE WITH ESTABLISHED PROCEDURES. NEITHER THE FACT THAT LAW HAS BEEN ADOPTED IN BERLIN NOR ANY DECISIONS TAKEN UNDER IT CAN BE DEEMED IN ANY WAY TO BE CONTRARY TO THE QA.

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 14789

C. IF THE SOVIETS FOCUS SPECIFICALLY UPON THE FACT THAT THE NEW LAW PROVIDES FOR THE POSSIBILITY OF THE BUNDESGERICHTSHOF REVIEWING A DECISION OF THE BERLIN KAMMERGERICHT IN A FUTURE SIMILAR CASE, WE MIGHT SAY:

-- THE PROVISIONS OF THE LAW PROVIDING THE POSSIBILITY OF REVIEW OF A BERLIN KAMMERGERICHT DECISION BY THE BUNDESGERICHTSHOF MERELY BRINGS THE 1953 LAW ON INNER-GERMAN COOPERATION IN CRIMINAL MATTERS INTO CONFORMITY WITH THE GREAT BULK OF CRIMINAL LEGISLATION LONG IN FORCE IN BERLIN. IT IS FULLY CONSISTENT WITH THE QA. THE ALLIES OF COURSE HAVE TAKEN AND WILL CONTINUE TO TAKE STEPS AS MAY BE NECESSARY TO ENSURE THAT THE EXERCISE OF JURISDICTION BY COURTS PROVIDED FOR UNDER LEGISLATION ADOPTED IN BERLIN IN NO WAY CONTRAVENES THE LEGAL POSITION WITH RESPECT TO THE LACK OF COMPETENCE OF THE FEDERAL CONSTITUTIONAL COURT IN BERLIN MATTERS.
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-- REFERENCE MIGHT ALSO BE MADE TO THE FACT THAT THE BUNDESGERICHTSHOF HAS HAD COMPETENCE IN BERLIN CASES SINCE 1951 AND THAT PRESENT AMENDING LAW CAN IN NO WAY BE SEEN AS ANYTHING BUT DEVELOPMENT OF PRESENT SITUATION. END TEXT.

3. RESULTS OF SCHEDULED FOLLOW-UP DISCUSSION ON TALKING POINTS WILL BE PROVIDED ASAP.

HILLENBRAND

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